

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION**

**MDL No. 1456**

**CIVIL ACTION: 01-CV-12257-PBS**

**Judge Patti B. Saris**

**THIS DOCUMENT RELATES TO  
ALL CLASS ACTIONS**

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO COMPEL THE  
TESTIMONY OF PATRICIA KAY MORGAN OF FIRST DATABANK**

Plaintiffs hereby respond to the Defendants' Motion To Compel the Deposition of First DataBank's Patricia Kay Morgan as follows:

Plaintiffs take no position on the Defendants' Motion to Conduct Ms. Morgan's deposition immediately, provided that any such deposition does not affect plaintiffs' right to conduct a further deposition of Ms. Morgan after receiving a full production of responsive documents from her employer, First DataBank (hereinafter "FDB"). As discussed below, FDB has not yet produced crucial discovery information, both documents and electronic data, including documents specific to Ms. Morgan. Without a complete production from FDB, plaintiffs are not yet in a position to conduct a thorough examination of Ms. Morgan.

Plaintiffs believe that the testimony of the various publishers of industry compendia, including FDB, is central to plaintiffs' allegations. Plaintiffs have served their own subpoena on several publishers, including FDB. To date, plaintiffs have received some documents from FDB, however plaintiffs have not yet received a substantial number of important documents. See supporting Declaration of John A. Macoretta ("JAM Declaration").

Among the significant categories of documents not yet produced by FDB are:

- \* FDB's full database of published prices, which would include the published AWP's and WACs. See JAM Declaration at ¶¶11, 12, 14 and 19;

- \* documents relating to the "surveys" that FDB claims formed the basis of its published AWP. JAM Declaration at ¶20;

- \* Various documents directly relating to how AWP's are caused to be published, such as customer contracts and FDB created monthly publications "Monthly Interest," "Technical Newsletter" and "Medicaid Faxes." Id.;

- \* documents concerning "Problem Ticket Profiles" which relate to questions about drug prices. Id.; and


- \* all of FDB's documents on its pricing policies, and training and user manuals, which all relate to how FDB publishes AWP's. Id.

Also missing from FDB's production are significant documents directly relating to Ms. Morgan. Ms. Morgan has testified in other actions relating to AWP. The State of Texas, Office of the Attorney General, deposed Ms. Morgan in In re Texas Civil Investigative Demand to FDB, on January 28, 2002. The Texas Attorney General also deposed Ms. Morgan in State of Texas, ex rel. Ven-A-Care vs. Dey, et. al., on November 13, 2002. Both of these actions are related to overpayment within Medicaid as the result of AWP manipulation. Plaintiffs have reviewed those transcripts, however FDB has not yet produced the exhibits that were used and discussed at these depositions. JAM Declaration at ¶¶10,21. Nor has FDB produced other documents directly relating to Ms. Morgan, such as her emails and documents discussed in such emails. JAM Declaration at ¶21.

If the Court determines that the Defendants are entitled to depose Ms. Morgan at this time, plaintiffs should be entitled to participate in that deposition and conduct cross examination, and they should have the right to conduct a further deposition of Ms. Morgan once FDB's document production is complete. To allow Ms. Morgan to be deposed only once, before FDB's document production is complete, will put plaintiffs and this Court at a substantial disadvantage, and will ensure that plaintiffs could not conduct a complete examination of Ms. Morgan.

Plaintiffs, of course, remain willing to discuss any reasonable case management procedures which would address the concerns of the defendants and FDB and allow plaintiffs to conduct a complete examination of Ms. Morgan based upon a full discovery record.

Dated: August 13, 2004



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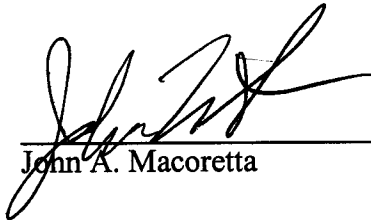
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing Response to Defendants' Motion To Compel the Deposition of First DataBank's Patricia Kay Morgan upon all counsel of record via Verilaw and upon counsel for First DataBank via electronic mail and regular mail at the address below:

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Date: August 13, 2004